



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

*PH*

File:

Office: NEBRASKA SERVICE CENTER

Date:

JAN 18 2001

IN RE: Petitioner:

Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

*Public Copy*

Identifying data omitted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Mary C. Mulrean*

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a Nevada corporation that claims to be an importer of firearms and ammunition, and a subsidiary of [REDACTED] located in the Czech Republic. It seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify her as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director of the Nebraska Service Center denied the petition because the petitioner failed to establish that the beneficiary is currently and will continue to be employed in a primarily executive or managerial capacity.

On appeal, counsel submits a brief. The petitioner submits affidavits of its employees. Each affiant describes his or her job responsibilities and place within the corporate hierarchy.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The issue to be examined in this proceeding is whether the job capacity of the beneficiary is currently and will be primarily managerial or executive. It is noted that the beneficiary has been employed by the petitioner in L-1A nonimmigrant status since approximately July 1998.

The director found that the beneficiary does not meet the definition of a multinational manager or executive because, as a relatively small company (6 employees), the petitioner cannot support a position that is primarily executive or managerial in

nature. According to the director, the size of the petitioner necessitates the beneficiary's involvement in a wide range of routine daily functions that are unrelated to the definitions of managerial capacity and executive capacity. The director further noted that the beneficiary did not supervise any supervisory, managerial or professional employees, a necessary component for finding that an individual is a manager or executive.

On appeal, counsel claims that the duties of the beneficiary meet the definitions of both executive capacity and managerial capacity. As vice president, the beneficiary plans and directs the management of the petition through its own employees, as well as outside contract employees who perform the legal and accounting duties. Counsel also maintains that because the president of the petitioner is not physically present in the U.S. entity, the beneficiary is the individual responsible for establishing goals and policies and exercising wide latitude in discretionary decision-making, duties which she executes with little supervision.

Counsel further maintains that the beneficiary manages a function, and, therefore, the petitioner did not need to show that the beneficiary supervised and controlled the work of supervisory, managerial or professional employees, which was one basis of the director's denial.

Finally, counsel argues and the prior approval of an L-1A petition on behalf of the beneficiary shows that she functions in a managerial or executive capacity, and since no factors have changed since the time of the petition's approval, the denial of the instant I-140 petition constitutes a clear abuse of the director's discretion.

Counsel's arguments are persuasive in part, and unpersuasive in part. While the evidence does not clearly indicate that the beneficiary functions in a primarily executive capacity, her duties for the U.S. entity fall within the definition of managerial capacity, as described in 8 C.F.R. 204.5(j)(2).

To qualify as a multinational manager, an individual must primarily: (1) manage the organization, or a department, subdivision, function or component of the organization; (2) exercise direction over the day-to-day operations of the activity or function of which he or she has authority; (3) either supervise and control the work of other supervisory, professional, or managerial employees, or manage an essential function within the organization, or a department or subdivision of the organization, and (4) have the authority to hire and fire or recommend personnel actions if he or she directly supervises other employees, or, if the managerial employee does not supervise other employees, function at a senior level within the organizational hierarchy or with respect to the function managed.

Contrary to the director's finding, the petitioner submitted ample evidence that the beneficiary manages a function for the petitioner.

As required by 8 C.F.R. 204.5(j)(5), the petitioner submitted several statements, which clearly described the duties to be performed by the beneficiary. The evidence indicated that the beneficiary is the primary individual responsible for managing the day-to-day operations of company, which include the sales and marketing of firearms and ammunition. The sales and marketing of firearms and ammunition is also the petitioner's essential function. Although the beneficiary does not supervise supervisory, managerial or professional employees, she, nevertheless, manages the organization through other employees who are on the company's payroll and working as outside contractors. As the president does not work on the petitioner's premises, the beneficiary functions at a senior level within the company. The petitioner also indicated in its statements that the beneficiary has the requisite authority to direct the day-to-day operations of the company.

Based on the evidence in the record, the beneficiary's position with the U.S. entity is primarily managerial. Therefore, the director's objections have been overcome.

Finally, regarding counsel's argument that the director's denial of the instant I-140 petition constituted a clear abuse of discretion, numerous decisions have established that the Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., Sussex Engg. Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); Matter of Church Scientology Int'l., 19 I&N Dec. 593, 597 (BIA 1988). Although it does not appear in this case that the prior approval of the beneficiary's L-1A petition was erroneous, the director was not precluded from denying the I-140 petition solely because a prior L-1A visa petition had been approved.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained.